IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4075 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LATTA PRAG

Versus

UNION OF INDIA

Appearance:

MR DM THAKKAR for Petitioner No. 1

MR JC SHETH for Respondents No. 1-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 22/02/2002

ORAL JUDGEMENT

1 The petitioner, who was appointed as Rakshak in the Railway Protection Force has been removed from the service on the ground of authorised absence from duty for about five months and the said removal has been

challenged in this petition.

2 It appears that on or around 7/11/1965, the petitioner fell ill. He went to the Railway Hospital, Indore and after availing of treatment from AMO Railway Hospital, Indore he proceeded to Vadodara, where his family was living. The petitioner got himself treated by a private doctor at Vadodara. The case of the respondent administration is to the effect that the petitioner had not intimated the respondents about his illness and the same was a concocted story only with a view to explain his unauthorised absence.

3 On 19/1/1966 the petitioner was chargesheeted. The main charge being that the petitioner had withdrawn himself from duty from 7/9/1965 without any authority, permission or any intimation to his superiors. In pursuance of the said chargesheet the inquiry proceedings proceeded exparte and ultimately on 28/5/1966 the petitioner was removed from service as being unauthorisedly absent for a period of about five months. This order was passed by the Assistant Security Officer, Ratlam. The petitioner appealed before the Security Officer, Baroda against the aforesaid order and on 15/11/1966 the Appellate Authority set aside the order of removal and directed a fresh inquiry. In the fresh inquiry the petitioner submitted his defence supported by the medical certificate. However, on 30/3/1967 the petitioner was once again removed from service by Security Officer, Western Railway, Vadodara. The petitioner filed appeal on 10/4/1967 and the said appeal was dismissed on 4/7/1967. The petitioner filed Civil Suit No. 408 of 1971 against the aforesaid order, which was dismissed on 22/9/1975. The petitioner appealed against the said judgment and decree passed by the Trial Court and the District Court was pleased to partly allow the said order by order dated 29/12/1983, whereunder the order of the Appellate Authority was set aside and the Appellate Authority was directed to rehear the appeal. On 20/3/1985 the Appellate Authority once again dismissed the appeal. Aggrieved petitioner thereafter approached this Court interalia, praying that the removal from service was bad in law and the respondent be directed to reinstate the petitioner with full back wages and other consequential benefits.

4 Having heard Mr.D.M.Thakkar, appearing for the petitioner this petition is required to be allowed only to the extent of modifying the punishment. It is pertinent to note that the Inquiry Officer after holding the petitioner guilty of the charges framed against him

stated that the following extenuating circumstances should be taken into consideration while awarding punishment :

a) That there was none in the house who was aware of Railway Rules and regulations which resulted in late advise of the information of his sickness under Private Doctor's treatment.

b) In view of the copy of the Private Doctor's certificate submitted along with oral defence of the defaulter, it would be observed that the defaulter was suffering from the following diseases :

(i) Rheumatic fever, (ii) Mental depression and (iii) General disability."

5 However, neither the Disciplinary Authority nor the Appellate Authority have thought it fit to take the aforesaid aspect into consideration. The Appellate Authority in its order has stated that as per the records of the AMO Railway Dispenasry, Indore, there was nothing serious with petitioner which would prevent him from performing his duties. The certificate of private doctor produced by the petitioner has not been doubted but the same is not taken into consideration because the same was produced before the Railway Doctor at Indore after eight months of absence from duty.

6 The Disciplinary Authority and the Appellate Authority have lost sight of the fact that the original inquiry had proceeded exparte and even the first order passed by the Appellate Authority had been set aside by the District Court, Vadodara for the purpose of granting full opportunity to the petitioner. I am aware that the Supreme Court in the case of V.R.Katarki vs. State of Karnataka, AIR 1991 SC 1241, has stated that ordinarily, justification of the quantum of punishment imposed in a disciplinary action is not for the Court to decide and when the same was interfered with by the High Court, there have been occasions when the Apex Court has held the same to be an act in excess of the jurisdiction of the High Court. In the case of Varsinh Bhagwan vs. State of Gujarat, 1992(2) G.L.H.311 at page 316 this Court has observed as under :

"From the facts and circumstances of the case, it is evident that the plaintiff remained absent without leave or permission for 101 days. It is

certainly a misconduct for which adequate punishment or penalty should be imposed on the plaintiff. The question, however, would be whether the punishment of dismissal imposed on the plaintiff is just, proper or commensurate with the guilt of the plaintiff. It is not in dispute that the authority is conferred with the powers to inflict minor and major penalties such as warning, censure, extra drill or duty, fine, stoppage of increments, reduction in rank, removal or dismissal. It is absolutely essential that the authorities should give a serious thought to the question of penalty. The imposition of penalty cannot be arbitrary or capricious, but it must always depend upon the nature and extent of the misconduct established in a given case. As is held in H.P.Thakore's case, 20, G.L.R. 109 (supra), one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide. In other words, the penalty imposed should be commensurate with the magnitude of the fault. The plaintiff remained absent without any permission or report and as such committed misconduct. However, the indiscipline of the plaintiff could have been remedied by imposing a lighter penalty than that of the dismissal, inasmuch as withholding of increments for the misconduct that has been committed by the plaintiff. It is not on the record that the plaintiff was in habit of remaining absent. It appears that it was his first misconduct to be away from duty without permission. Therefore, in view of this background, imposition of such harsh and severe punishment is unwarranted . If after imposing the light punishment, the delinquent repeatedly commits similar violation of the conduct rules, he can be visited with more harsh or severe penalty and ultimately the order of removal from service can be passed if such a situation arises. However, without giving any opportunity to improve by imposing a lighter penalty, imposition of such severe punishment of dismissal is not commensurate with the established guilt. If a bread-earner is deprived of a job for such misconduct or remaining absent without leave, it is not only the delinquent who suffers on that account, but his entire family would face economic ruination. It is, therefore, necessary that the authority which is charged with the duty of selecting the penalty, i.e. to

be imposed for proved misconduct, must weigh all the pros and cons and after serious application of mind should decide on the question of punishment. In Sardarsingh Devisingh v. Dist.Supdt. of Police, Sabarkantha & Others, 1985 G.L.H. 940, it has been observed that the penalty of dismissal from service should be invoked sparingly and in gross cases only. In H.P.Thakore's case , 20 G.L.R. 109 (supra), it is observed that in order not to attract the charge of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. In Sattuji Babaji v. State of Gujarat and Another, 1986 G.L.H.(U.J.) 46, it has been held that removal from service can be imposed in grave cases and in case of corruption or dishonest misappropriation. It has been further observed therein as under :

'There are different kinds of punishments with different degrees of severity depending upon different degrees of gravity of misconduct. The disciplinary authority and the appellate authority are expected to consider as to whether any lesser punishment could have served the ends of justice and of the administration and also maintenance of discipline and good conduct in the police service ....` "

7. The question that would therefore arise in the present case is as to what would be the punishment which could be said to be commensurate with the default of the petitioner. Taking into consideration the fact that the illness of the petitioner has not been doubted the fact that this was the first default committed by the petitioner in his long standing service of 18 years and that fact that neither the Disciplinary Authority nor the Appellate Authority have applied their minds to the aforesaid aspects, it would be in the interest of justice if the order of dismissal from service is modified to one of compulsory retirement. It is accordingly directed that in place of dismissal the petitioner shall be treated to have compulsorily retired from service from the date when his dismissal became operative. The petition is allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J)

m.m.bhatt